IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-03-2002

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 243 OF 1996 AND W.M.P.NO.396 OF 1996

1.Syed Yousuf
2.Syed Ahmed
3.Syed Aquil .. Petitioners

Vs.

1. Tamil Nadu Wakf Board,
rep. By its Secretary,
Santhome High Road,
Madras 4.

2. The Superintendent of Wakf
Northern Zone,
Mecca Mosque,
Mount Road, Madras 2. .. Respondents

Petition filed under Article 226 of the Constitution of India
for issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr.K. Yamunan

For Respondents : Mr.Zaffarullah Khan

: JUDGMENT

Petitioners have filed this writ petition for quashing the proceedings of the respondent No.1 in Lr.Rc.No.12465/C2/MDS/95 dated 16.11.1995.

Facts giving raise to the present writ petition are as follows :-

The Dargha known as 'Hazarath Syed Moosa Sha Kadiri' was managed by two brothers Syed Ismail and Syed Gulam Dasthagir Saheb. After the death of two brothers, dispute arose between legal heirs of two branches and O.S.No.116 of 1909 was filed in High Court, Madras. The matter was disposed of by the judgment and decree dated 11.8.1910 wherein it was declared as follows:-

" That the 1st plaintiff and the 1st and 2nd defendants herein are entitled to collect and receive the offerings, gifts and other emoluments of

the said darga as well as the collections of the Hundi Box in the said dargha and apportion the same in two equal moieties and that Syed Moosa Sahib, the 1st plaintiff is entitled to one half and Syed Gaffar Sahib, and Syed Moideen Sahib, the 1st and 2nd defendants are entitled to the other half of the collections, offerings, gifts and other emoluments."

The aforesaid decree was confirmed in O.S.A.No.34 of 1910.
Subsequently two writ petitions, namely W.P.Nos.5315 of 1991 and 6401 of 1987 were decided by the learned single Judge of this Court on 28.2.1992 wherein W.P.No.6401 of 1987 was dismissed as infructuous as the order impugned in the said writ petition has been set aside by the Government in appeal and the matter has been remanded for fresh disposal.
Connected W.P.No.5315 OF 1991 was allowed in part and appointment of one Saheb

Mohideen as Mutawali was quashed. It now transpires that the aforesaid order was challenged in appeal which was allowed, but the matter is pending before the Supreme Court.

2. It has been asserted in the writ petition that as per the decree in O.S.No.116 of 1909, different persons remained in charge by turn and they have got right to the offerings made during their turn. It is stated that during the turn of the present petitioners, a ceiling fan and a table fan were donated by devot ees. Ceiling fan was affixed to the Mosque by removing the old fan and the table fan which was in the mosque by the petitioners was subsequently retained by them after their turn was over. A letter was issued by the respondents to the petitioner to return the old ceiling fan and the new table fan on 1 .10.1995 and subsequently on 16.11.1995, the first respondent called upon the first petitioner to restore the old ceiling fan and the new Modi Table Fan within 48 hours failing which legal action would be taken. A reply was given by the first petitioner wherein it was indicated that as per the custom and practice followed in the Management of the Dargha for more than half century, turn trustees were retaining the offerings and the articles. It was further indicated that the Wakf Board has nothing to do with the matter. The present writ petition is for quashing the letter dated 16.11.1995.

3. It has been contended by the learned counsel on behalf of the petitioner that as per paragraph-2 of the decree, the persons in charge are entitled to retain the offerings and as such the first respondent has no jurisdiction to give direction.

4. The question as to whether the trustee in charge at the particular time would have absolute right over the articles]offered by the devotees would obviously depend upon the intention of the devotees and as a general rule it cannot be laid down that all the offerings can be appropriated by the trustee in charge of a particular turn during which such offerings have been made. For example, a devotee may donate marble slabs. Prima facie in the absence of any contrary express direction, it must be assumed that such marble slabs are donated for the purpose of improving the flooring or wall of the Dargha rather than for the personal use of the trustee in charge. On the other hand supposing some food articles or similar perishable things are offered, one may reasonably conclude that the intention of the devotee is the

offering should be utilised by the trustee in charge for his personal use.

5. Even the petitioners in their affidavit do not claim absolute right to the offerings made. In paragraph 14 of their affidavit, it has been stated that

" . . . One of our turn this year began on 21.8.1995 and ended with 1.10.1995. During this period a table fan and a new ceiling fan was donated by some devotees. The new ceiling fan was fixed in the Dargha premises in the place of the old ceiling fan. The new table fan that was donated was kept in the Dargha during our Management and it was removed by us when our turn came to an end."

The very fact that the petitioner had fixed the new ceiling fan in the place of old ceiling fan and kept a new table fan during their turn is indicative of the fact that they were conscious that the devotees wanted the fan should bei utilised in the Dargha and not by them personally. Therefore, the claim of the petitioners that they are entitled to retain the old fan and the new table fan for their personal use is not acceptable. However, it has been stated in the affidavit that there is no place in the Dargha to affix the old fan which has been removed or to utilise the table fan. This is a matter which is to be decided by the Trustees. If it is found feasible to use the table fan or the old fan in the Durgha , the same could be done. Till appropriate action is taken, the articles may be kept in the custody of the first petitioner as a Receiver and not as an owner of such articles.

6. In course of hearing, it was pointed out that even a criminal proceedings has been initiated against the petitioners for the alleged theft of articles, namely the old ceiling fan and the table fan. It is obvious that the petitioners had no criminal intention in the matter and they were purporting to follow the terms of the old decree as well as the earlier conventions. Since the petitioners had no criminal intention in the matter, it is made clear that the criminal proceedings, if still pending, should be dropped and need not be further proceeded with.

Subject to the aforesaid observation, the writ petition is disposed of without any order as to costs. Consequently, W.M.P.No.396 of 1996 is closed.

-03-2002

Index: Yes / No
Internet: Yes/No
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